Office-Supreme Court, U.S.
FILED
JUL 8 1969
JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1969

No. [redacted] 243

TEXAS OIL & GAS CORP., a corporation, and
JOHN H. HILL, an individual,
Petitioners,

VERSUS

PHILLIPS PETROLEUM COMPANY, a corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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July, 1969

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. CE 5-0030

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In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. 1529

TEXAS OIL & GAS CORP., a corporation, and
JOHN H. HILL, an individual,
Petitioners,

VERSUS

PHILLIPS PETROLEUM COMPANY, a corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

RESPONDENT'S POSITION

In their Petition for a Writ of Certiorari, petitioners state that the question presented for review is:

> "* * * whether or not state regulatory agencies shall be permitted to regulate the production of oil and gas from Federal lands when a branch of the United States Government exercises regulatory control over the same operations." (page 2 of Petitioners' Petition for Writ of Certiorari.)

However, the respondent's position is that this case presents only a dispute between two private parties concerning the ownership of a portion of the working interest of two Federal oil and gas leases issued by the Secretary of the Interior pursuant to authority vested in him by the

Federal Mineral Leasing Act of 1920, as amended, and that neither the necessary facts nor the necessary parties are present to justify this Court in resolving the purely hypothetical question which petitioners have posed.

STATEMENT OF CASE

This action was instituted by petitioners in the United States District Court for the Western District of Oklahoma. The action involved an effort by the petitioners to quiet their alleged title to a portion of the leasehold interest in two Federal oil and gas leases covering lands located in the State of Oklahoma. These leases were issued by the Secretary of the Interior pursuant to the authority of the Federal Mineral Leasing Act of 1920, as amended. The petitioners challenged the validity of an order of the Oklahoma Corporation Commission, which order ultimately resulted in the transfer by operation of law of a portion of the above-described oil and gas leases to the respondent, Phillips Petroleum Company. The respondent answered denying the claims of the petitioners and pleaded a number of defenses to the petitioners' action, which defenses, summarized very briefly, are as follows:

1. Failure to state a claim upon which relief can be granted;
2. Absence of indispensable parties;
3. The running of the time to seek a judicial review of decisions of the Department of the Interior (Title 30, U.S.C. § 226-2);
4. Estoppel to relitigate issues previously litigated to a final determination;

5. Estoppel to collaterally attack the orders of the Oklahoma Corporation Commission;

6. Estoppel to obtain the equitable relief requested by virtue of the petitioners' own conduct;

7. That the petitioners, by virtue of the terms of the leases under which they claim, the laws applicable thereto, and the action of the United States Government, are bound to recognize the respondent as the owner of the interest claimed by the petitioners;

8. That petitioners have not sought the proper forum for judicial review;

9. That the Doctrine of Election of Remedies bars this action;

10. That one of the petitioners is not the real party in interest; and,

11. That the United States of America is an indispensable party in this action.

In addition, respondent, by counterclaim, sought to quiet its title to the interest in dispute.

The United States District Court for the Western District of Oklahoma, following the trial of the case, entered judgment dismissing the action of the petitioners for failure to assert a claim upon which relief may be granted and quieted title in the respondent to the interest in dispute. The District Court's memorandum opinion and judgment are set forth in Appendix B and B-1, respectively, in the petitioners' Petition for Writ of Certiorari. A minor aspect of the original Journal Entry of Judgment was corrected by a subsequent Order *Nunc Pro Tunc* (App. 1). The decision of the United States Court of Appeals for the Tenth Cir-

cuit which affirmed the District Court decision, is set forth in Appendix A to petitioners' Petition for a Writ of Certiorari.

FACTS[1]

Prior to March 4, 1964, one Thomas Connell was the sole owner of the following described United States Government oil and gas leases insofar as the same covered the designated tracts of land located in Roger Mills and Ellis Counties, State of Oklahoma (Defendant's Exh. 2 [Request for Admissions], R. 191, 829; Defendant's Exhs. 9 and 10, R. 196, 856, 901).

Lease BLM 037167 covering:

> Lots One (1), Four (4), Five (5) and Eight (8) of Section Eighteen (18), Township Seventeen (17) North, Range Twenty-five (25) West;

---

[1] Reference to pages of the Record will be preceded by the prefix "R." Certain facts referred to in this brief were established by respondent introducing into evidence portions of Admission of Facts and Interrogatories answered separately by petitioners. Pages 182-197 of the Record show what portions of the Admissions of Facts and Interrogatories were introduced by respondent. The use of several page numbers to indicate the location of a particular fact in the Record will usually indicate pages of the Record wherein the Admissions of Fact and Interrogatories are contained, and by consulting all the referred to pages of the Record, the reader will be able to verify that the fact was proved as to both petitioners. References to the facts will also be cited in accord with Rule 40, § 2 of the Supreme Court Rules.

The trial court advised the petitioners that their offer of those portions of the Admission of Facts and Interrogatories *not* offered by the respondent would be entertained by the court and rejected if improper and accepted if proper evidence (R. 202). The respondent urges that, for the reasons set forth in its objection on page 200 of the Record, the petitioners' offer should have been, and presumably was, rejected by the court. (See *Lobel* v. *American Airlines, Inc.*, 192 F.2d 217 (2nd Cir. 1951), *cert. denied*, 342 U.S. 945.)

Lease NM 024918 covering:

Lot Nine (9), Section Eighteen (18), Township Seventeen (17) North, Range Twenty-five (25) West.

These leases (Plaintiffs' Exh. 1, R. 171, 394, 395; Plaintiffs' Exh. 2, R. 171, 550, 551, 552) had been issued by the Secretary of the Interior pursuant to authority vested in him by the Federal Mineral Leasing Act of 1920, as amended. Lease NM 024918 was issued May 29, 1956, and Lease BLM 037167 was issued April 23, 1954.

Pursuant to authority vested in it by Title 52 Okla. Stat., § 87.1 (1961) (App. 2), the Oklahoma Corporation Commission, by Order No. 51093 dated February 20, 1963, established 640-acre drilling and spacing units for the production of gas and gas condensate from the Tonkawa Sand underlying Townships Seventeen (17) and Eighteen (18) North, Ranges Twenty-five (25) and Twenty-six (26) West in Ellis and Roger Mills Counties, Oklahoma (which townships include the section of land involved in this lawsuit). The Oklahoma Corporation Commission is a commission created by the Oklahoma Constitution, is a court of record, and is charged with the conservation of oil and gas in the State of Oklahoma. The above-mentioned Order No. 51093 is set out in Appendix G in the petitioners' Petition for a Writ of Certiorari. In said order it was provided that each governmental section therein contained should constitute a drilling and spacing unit except for certain fractional sections not involved in this lawsuit.

Thereafter, one of respondent's attorneys contacted the Office of the Regional Oil and Gas Supervisor for the Geo-

logical Survey, an agency of the United States Department of the Interior, concerning the lands involved in this lawsuit. In response to said inquiry and by letter dated November 5, 1963 (Defendant's Exh. 2, R. 199, 625), said Regional Oil and Gas Supervisor advised respondent, among other things, that:

> "It is our opinion that if you find it necessary to obtain a state order adjudicating and force pooling the leasehold interest of a Federal lessee to drill and operate section 18 in accordance with the established spacing, then, all else being regular, a communitization agreement which contains adequate provisions for the protection of the interests of all parties, including the United States, could be approved without the signature of a Federal lessee who refused to sign. A copy of the appropriate order should be attached to the communitization agreement and by reference made a part thereof as evidence that the leasehold interest of the unsigned party is effectively committed by state statute." (Defendant's Exh. 2, R. 199, 625.)

Following the above, and prior to March 4, 1964, respondent, who along with others, was desirous of drilling to and exploring the Tonkawa formation in and under Section 18, Township 17 North, Range 25 West, Ellis and Roger Mills Counties, Oklahoma, filed its application with the Oklahoma Corporation Commission for an order pooling and adjudicating the rights and equities of the owners of oil and gas leases in said section for the production of gas and gas condensate from the Tonkawa formation. Said Section 18 included both privately and federally owned lands. Ninety-seven acres of the land included within the section were covered by the two Federal oil and gas leases involved in this lawsuit. On March 4, 1964, pursuant to authority

vested in it by Title 52 Okla. Stat., § 87.1(d) 1961, of the laws of the State of Oklahoma (App. 2), the Oklahoma Corporation Commission entered its Order No. 54373. This Order No. 54373 is set out in Appendix H in the petitioners' Petition for Writ of Certiorari. Said order, among other things, established the right of Thomas Connell, the then-owner of the Federal leases involved in this action, to participate in the drilling of a well on this 640 acres by paying his proportionate part of the costs or accepting from respondent a bonus established by the evidence for his lease-hold interest in the event he elected not to participate. Said order further provided that if Connell did not elect to participate, it would be deemed that he had elected to accept the bonus.

Said Thomas Connell did not elect to participate in the drilling of said well (Defendant's Exh. 2 [Request for Admissions], R. 191, 830; Defendant's Exhs. 9 and 10, R. 196, 856, 901). The time for appealing from Corporation Commission Order No. 54373 to the Oklahoma Supreme Court as authorized by Title 52 Okla. Stat., §§ 111, 112 and 113 (1961) (App. 3), passed without an appeal being taken (Defendant's Exh. 2 [Request for Admissions], R. 191, 830; Defendant's Exhs. 9 and 10, R. 196, 857, 901). The respondent tendered to Thomas Connell the bonus of $40.00 per acre provided for in the Oklahoma Corporation Commission Order No. 54373 (Defendant's Exh. 2 [Request for Admissions], R. 191, 834; Defendant's Exhibits 9 and 10, R. 196, 859, 901). By virtue of Connell's failure to participate, and the terms of said Order No. 54373, his interest in the Tonkawa formation covered by subject leases became the property of respondent (*Anderson* v. *Ellison*, 285 F.2d 484 [10th Cir. 1960]).

Thereafter, petitioners acquired their alleged interests in the oil and gas leases from Thomas Connell with knowledge: (a) that respondent was claiming the ownership of said leases, insofar as they pertained to the Tonkawa formation in and under the lands described in petitioners' Second Amended Complaint, by virtue of the proceedings had before the Oklahoma Corporation Commission; (b) that the claim of ownership by respondent was based on the Oklahoma Corporation Commission Order No. 54373 and the subsequent failure of Thomas Connell to elect within the time permitted by said order to participate in the drilling of the well referred to in said order; (c) that a well (which was drilled on the private lands included in the drilling and spacing unit) had been drilled by the respondent and others in compliance with the Oklahoma Corporation Commission Order No. 54373; and, (d) that said well had been completed as a valuable producer of gas and gas condensate (Defendant's Exh. 2 [Request for Admissions], R. 191, 831; Defendant's Exhs. 9 and 10, R. 196, 857, 901).

After petitioners acquired their purported interest from Thomas Connell, petitioners engaged respondent in proceedings before the United States Bureau of Land Management at Santa Fe, New Mexico (Defendant's Ex. 2 [Request for Admissions], R. 191, 832; Defendant's Exhs. 9 and 10, R. 196, 858, 901), which resulted in a decision by Howard M. Grotberg, Chief, Branch of Mineral Adjudication (Defendant's Exh. 3, R. 193, 930), in which he held that by virtue of the proceedings had before the Oklahoma Corporation Commission, the respondent would be recognized as the owner of the working interest of Thomas Connell in the oil and gas leases in question insofar as the

Tonkawa formation was concerned. The pertinent language of the decision which recognized this change of ownership was as follows:

> "Accordingly, Corporation Commission Order No. 51093 [actually referring to Order No. 54373 (R. 933)] is hereby recognized as affecting a transfer by operation of Oklahoma law, of the working interest of Mr. Connell to Phillips Petroleum Company in Lots 1, 4, 5, 8 and 9, Sec. 18, T. 17 N., R. 25 W.I.M., Oklahoma in the producton of gas and gas condensate from the Tonkawa Sands formation, restricted to the existing well drilled under the authorization of order 51093. Record title will remain in the name of Thomas Connell." (Defendant's Exh. 3, R. 191, 931)

The petitioners appealed this decision to the Director of the Bureau of Land Management, Washington, D.C. (Defendant's Exh. 2 [Request for Admission], R. 191, 832; Defendant's Exhs. 9 and 10, R. 196, 858, 901), and said decision was affirmed in a decision entered by Francis A. Patton, Chief, Branch of Mineral Appeals, Office of Appeals and Hearings (Defendant's Exh. 4, R. 194, 933). The pertinent language contained in the decision affirming the earlier decision is as follows:

> "By its Corporation Commission, the State of Oklahoma has acted in a matter normally within its competence in dealing with conservation of oil and gas. The effects of its actions are not inconsistent with any Federal law or regulation. The right of the United States to receive royalty based on production of oil or gas from the leasehold has not been impaired or infringed. The Order affects only the activity of the lessee. Furthermore, the Geological Survey has indicated willingness to approve the communitization agreement pro-

posed by Phillips for all section 18, T. 17 N. R. 25 W., I.M., and has concurred in the drilling and spacing unit established by the Commission. The assertion that Federal authority over federal leases has been abdicated is unfounded.

"The Order No. 54373 of the Oklahoma Corporation Commission was certified to the land office as being final in all respects. Accordingly, recognition by the land office of the transfer of the working interest set forth in the said Order from Thomas Connell to Phillips Petroleum Company was proper." (Defendant's Exh. 4, R. 194, 935)

Thereafter, the petitioners appealed to the Secretary of the Interior (Defendant's Exh. 2 [Request for Admissions], R. 191, 832; Defendant's Exhs. 9 and 10, R. 196, 858, 901). Said appeal was dismissed upon a stipulation of the parties hereto that in the event either party should file an action in a court having jurisdiction of the controversy with regard to the validity and efficacy of the Oklahoma Corporation Commission Order No. 54373, said court action would be allowed to proceed on the same basis as though the appeal to the Secretary of the Interior had been consummated and a final decision obtained from the Secretary of the Interior affirming the decision of the Bureau of Land Management (Plaintiff's Exh. 3, R. 171, 561).

The petitioners, in the proceedings before the Bureau of Land Management, urged, in opposition to the claim of the respondent, most of the objections urged in their appeal to the United States Court of Appeals for the Tenth Circuit (Defendant's Exhs. 1 and 2 [Request for Admissions], R. 186, 191, 789, 836; Defendant's Exhs. 9 and 10, R. 196, 861; 864). (See instrument at R. 792 and R. 864.)

Subsequent to the entering of the Oklahoma Corporation Commission Order No. 54373 alleged by the petitioners to be null and void, the petitioners themselves instituted proceedings before the Oklahoma Corporation Commission for the purpose of force pooling owners of other Federal oil and gas leases. And, as a result of such proceedings, orders were entered by said Commission force pooling the interests of the owners of Federal oil and gas leases (Defendant's Exh. 2 [Request for Admissions], R. 191, 833; Defendant's Exhs. 9 and 10, R. 196, 859, 903). An example of one such order obtained by the petitioners is Order No. 56909 found at page 941 of the Record, which order was entered on November 24, 1964, only twenty-four days prior to the date of the decision of the Bureau of Land Management in proceedings wherein the petitioners were contending that such orders were null and void. On the 27th day of May, 1966, the United States Department of the Interior, Geological Survey, Tulsa, Oklahoma, by Floyd L. Stelzer, Acting Regional Oil and Gas Supervisor, formally approved and entered into a communitization agreement retroactive to March 18, 1964, wherein the Department of the Interior formally recognized Section 18, Township 17 North, Range 25 West, as comprising one unit for the production of gas and gas condensate from the Tonkawa formation (Defendant's Exhs. 1 and 2 [Request for Admissions], R. 186, 191, 788, 835; Defendant's Exhs. 9 and 10, R. 196, 860, 903). (See instrument R. 803 and R. 875.)

ARGUMENT AND AUTHORITIES

The petitioners do not question the constitutionality of the activities of the Oklahoma Corporation Commission in general (p. 8 of Petition for Writ of Certiorari). However, the petitioners take the position that their predecessor, Thomas Connell, as *the owner of the two Federal leases,* was immune from the force and effect of the Oklahoma Corporation Commission orders described above. The petitioners urge that as to Thomas Connell, the Oklahoma Corporation Commission's force pooling order (set forth in Appendix H of the Petition for Writ of Certiorari) which, upon Mr. Connell's failure to elect to participate in the drilling of the well, operated as a transfer of Mr. Connell's interest to the respondent by operation of law, was a nullity.

Transfers of the interest of Federal oil and gas lessees by operation of State law have been recognized by the courts for years. See, for example, the following cases which, while recognizing the authority of the Secretary of the Interior to approve or disapprove assignments, have uniformly held that this right of the Secretary of the Interior is for the protection and benefit of the Government only and is not available to the individual lessee. *Recovery Oil Co.* v. *Van Acker,* 79 C.A.2d 639, 180 P.2d 436 (Calif. 1947) (suit to quiet title to interests in Federal oil and gas lease); *Routt County Mining Co.* v. *Stutheit,* 101 Colo. 254, 72 P.2d 692 (Colo. 1937) (suit to quiet title to interest in Federal oil and gas lease); *Aronow* v. *Bishop,* 107 Mont. 317, 86 P.2d 644 (Mont. 1939) (suit to quiet title to interest in Federal oil and gas leases); *Rock Island Oil & Refining*

Co. v. *Simmons*, 72 N.M. 142, 386 P.2d 239 (N.M. 1963) (suit to quiet title to claimed equitable interest in Federal oil and gas lease); *Melish Consol. Placer Oil Mining Ass'n* v. *Burksenation Oil Co.*, 163 Okla. 20, 20 P.2d 879 (Okla. 1933) (levy of execution against interests in Federal oil and gas lease acquired by Sheriff's Sale); *Rue* v. *Merrill*, 42 Wyo. 511, 297 Pac. 379 (Wyo. 1931) (suit to quiet title to interest in Federal oil and gas lease); and *Isaacs* v. *DeHon*, 11 F.2d 943 (9th Cir., 1926) (suit to declare defendant trustee for plaintiffs as to specified fractional interest in a Federal oil claim and prospecting permit). The Court, in the *Isaacs* case, *supra*, in construing a regulation which provided that rights to receive a permit were not assignable, observed that:

> "Appellant is in no position to take advantage of this regulation. It may be that plaintiffs will lose the fruits of this litigation by the refusal of the Secretary to approve the assignment of interests in the permit. But appellant is nevertheless held in a court of equity to the obligations he assumed in his grubstake contract." (p. 944)

In addition to the above cases in which the courts have had no hesitation in permitting State law to affect the interest of a Federal oil and gas lessee, this Court, in the case of *Wallis* v. *Pan American Petroleum Corp.*, 384 U.S. 63 (1966), rejected the contention that the court must create a Federal general law governing transactions involving Federal oil and gas leases and chose instead to recognize the applicability of State law to such transactions.

Neither the petitioners nor their predecessor in title, Thomas Connell, exercised the statutory right of appeal

from the Oklahoma Corporation Commission orders complained of (App. 3). Nor, have the petitioners challenged the United States Bureau of Land Management decisions approving the action of the Oklahoma Corporation Commission. Rather, as noted by the United States Court of Appeals for the Tenth Circuit in its decision, the petitioners chose to collaterally attack the Oklahoma Corporation Commission orders insofar as they pertain to the Federal leases in question. Further, as noted by said Court of Appeals in its decision, the petitioners

> "deny that either the Secretary of the Interior or any of his subordinates are necessary or proper parties to the litigation and say that the judgment sought will merely determine the rights of the parties to the suit." (page ii of Appendix A to Petition for Writ of Certiorari.)

Both the United States District Court for the Western District of Oklahoma, and the United States Court of Appeals, found that any conditions imposed by the Federal Mineral Leasing Act of 1920, as amended, had been fully satisfied; that there was no threat to the royalty interest of the Federal Government in the lands involved; and that "no threat to any identifiable federal policy or interest [was] shown." These decisions are contained in Appendices A and B of the Petition for a Writ of Certiorari and are also reported in 277 F.Supp. 366 and 406 F.2d 1303.

It seems apparent, from an analysis of the facts as summarized in this brief and the above-mentioned decisions by the United States District Court for the Western District of Oklahoma and the United States Court of Appeals for the Tenth Circuit, that this case does not involve the

question which the petitioners urge as the basis for this Court granting certiorari, to-wit: whether . . ."state regulatory agencies shall be permitted to regulate the production of oil and gas from Federal lands when a branch of the United States Government exercises regulatory control over the same operations" (p. 2 of Petition for Writ of Certiorari). Even assuming the facts did raise such a question, the parties most vitally interested in such question (the State of Oklahoma and the Secretary of the Interior) are not parties to this action. The question posed by the petitioners has no significance in this lawsuit inasmuch as the United States Bureau of Land Management has approved the action taken by the Oklahoma Corporation Commission, and, by stipulation of the parties, this lawsuit has proceeded on the basis that the Secretary of the Interior would have approved the decisions of the Bureau of Land Management.

As previously stated by the respondent in explaining its position to the Court, this lawsuit involves simply a dispute between two private parties as to the ownership of a portion of two Federal oil and gas leases. The question submitted by the petitioners to this Court is neither applicable nor appropriate for determination by this Court in this lawsuit.

While there is not a United States Supreme Court decision directly in point with the facts of this case, the decision of this Court in the case of *Oklahoma Tax Commission* v. *Texas Co.*, 336 U.S. 342 (1949), *rehearing denied* 336 U.S. 958, sets forth reasoning which seems entirely appropriate to this case. The *Oklahoma Tax Commission* case, *supra*, dealt with the question of whether a lessee of

mineral rights in allotted and restricted Indian lands is immunized by the United States Constitution against payment of a State gross production tax. The Court, in an opinion by Justice Rutledge, observed that:

> "It may be taken that they (lessees) have operated the leases in *conformity with the applicable regulations of the Department of the Interior and of the State of Oklahoma,* except for the payment of the state taxes in question." (336 U.S. at 345) (Emphasis added.)

Then Justice Rutledge went on to justify the imposition of the tax on the lessees with the following statement:

> "Moreover, even if the status of respondents as federal instrumentalities, in the sense in which they use the term, were fully conceded, it seems difficult to imagine how any substantial interference with performing their functions as such in developing the leaseholds could be thought to flow from requiring them to pay the small tax Oklahoma exacts to satisfy their shares of the state's expense in maintaining and administering its proration program. *That system works for respondents' benefit in performing their producing function, as it does for the benefit of all other producers by stabilizing production, eliminating waste, and preventing runaway competition in an industry notorious for those evils in the absence of some control. * * * Indeed respondents do not claim they are exempt from the plan's regulatory features. They claim only that they are constitutionally immune from contributing to the plan's support. As a matter entirely fresh, the contention would not seem weighty."* (336 U.S. at 351 (Emphasis added.)

CONCLUSION

It is respondent's position that this lawsuit involved only a dispute between private parties as to the ownership of a portion of two Federal oil and gas leases and as such does not present an important question of Federal law which should be reviewed by this Court. Further, the parties who would be most vitally concerned with the Court's treatment of the hypothetical question posed by the petitioners, to-wit: the State of Oklahoma and the Secretary of the Interior, are not parties to this action. The fact that these parties are not present is because the petitioners and their predecessor, Thomas Connell, voluntarily elected to ignore these parties and instead attempted to collaterally attack the Oklahoma Corporation Commission orders and the Bureau of Land Management's decisions by bringing a quiet title action against the respondent rather than challenge the orders of said State and Federal agencies by appeal from said agencies' orders and decisions.

It is, therefore, respectfully submitted that the requested Writ of Certiorari should be denied.

Respectfully submitted,

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July, 1969

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Texas Oil & Gas Corp., a corporation, and John H. Hill, an individual, Plaintiffs,

—vs—

No. Civ. 66-241

Phillips Petroleum Company, a corporation, Defendant.

ORDER NUNC PRO TUNC

Now, on this 30 day of January, 1968, it appearing to this Court that heretofore on the 9th day of January, 1968, judgment was entered herein and filed herein under the designation Journal Entry of Judgment, that said judgment, among other things quieted the title and possession of the defendant, Phillips Petroleum Company, in United States Government Oil and Gas Lease BLM 037167 and United States Government Oil and Gas Lease NM 024918 insofar as said leases cover and pertain to the Tonkawa formation in and under Lots 1, 4, 5, 8 and 9 of Section 18, Township 17 North, Range 25 West, Ellis and Roger Mills Counties, Oklahoma, against all claims and demands by the plaintiffs, Texas Oil & Gas Corp. and John H. Hill, and those claiming or to claim under said plaintiffs, or either of them, that due to clerical oversight, the 7th line of the 4th paragraph of the above described journal entry contains the word "plaintiff" rather than the word "defendant."

THEREFORE, IT IS NOW ORDERED, ADJUDGED AND DECREED that as of the 9th day of January, 1968, the word "plaintiff" in the 7th line of the 4th paragraph of the above described journal entry of judgment be stricken

therefrom and the word "defendant" be inserted in place thereof.

Dated this 30 day of January, 1968.

/s/ Fred Daugherty
United States District Judge

O.K.

Attorney for Plaintiffs

O.K.

/s/ Don Jemison
Attorney for Defendant

FILED Jan 30 1968
Vera L. Howard
Clerk, U. S. District Court
By /s/ Alie Faye Johnson
Deputy

ATTEST: A true copy of the original
Vera L. Howard, Clerk
By /s/ Cecil A. Qualls
Deputy

APPENDIX 2

Title 52, Okla. Stat., § 87.1

§ 87.1 Common source of supply of oil—Well spacing and drilling units

Whenever the production from any common source of supply of oil or natural gas in this State can be obtained only under conditions constituting waste or drainage not compensated by counterdrainage, then any person having the right to drill into and produce from such common

source of supply may, except as otherwise authorized or in this Act provided, take therefrom only such proportion of the oil or natural gas that may be produced therefrom without waste or without such drainage as the productive capacity of the well or wells of any such person considered with the acreage properly assignable to each such well bears to the total productive capacities of the wells in such common source of supply considered with the acreage properly assignable to each well therein.

Establishment of units

(a) To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes, or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, or oil or gas within the State of Oklahoma. Such order establishing well spacing or drilling units for a common source of supply may be entered after a hearing upon the petition of any person owning an interest in the minerals in lands embraced within such common source of supply, or the right to drill a well for oil or gas on the lands embraced within such common source of supply, or on the petition of the Conservation Officer of the State of Oklahoma. When such a petition is filed with the Commission, the Commission shall give at least fifteen (15) days' notice of the hearing to be held upon such petition by one publication at least fifteen (15) days prior to said hearing, in some newspaper of general circulation printed in Oklahoma City, Oklahoma, and by one publication, at least fifteen (15) days prior to the date of said hearing, in some newspaper printed in the county, or in each county, if there be more than one, in which the lands

embraced within the application are situated. Except as to the notice of hearing on such a petition, the procedural requirements of Sections 84 to 135, inclusive, of Title 52, Oklahoma Statutes of 1941, shall govern all proceedings and hearing provided for by this section.

Acreage of unit—Order establishing

(b) In establishing a well spacing or drilling unit for a common source of supply thereunder, the acreage to be embraced within each unit and the shape thereof shall be determined by the Commission from the evidence introduced at the hearing and the following facts, among other things, shall be material:

(1) The lands embraced in the actual or prospective common source of supply (2) the plan of well spacing then being employed or contemplated in said source of supply; (3) the depth at which production from said common source of supply has been or is expected to be found; (4) the nature and character of the producing or prospective producing formation or formations; (5) any other available geological or scientific data pertaining to said actual or prospective source of supply which may be probative value to said Commission in determining the proper spacing and well drilling unit therefor, with due and relative allowance for the correlative rights and obligations of the producers and royalty owners interested therein.

The order establishing such spacing or drilling units shall set forth: (1) the outside boundaries of the surface area included in such order; (2) the size, form, and shape of the spacing or drilling units so established; (3) the drilling pattern for the area, which shall be uniform; and (4) the location of the permitted well on each such spacing or drilling unit. To such order shall be attached a plat upon which shall be indicated the foregoing information. Subject to other provisions of this Act, the order establishing such spacing or drilling units shall direct that no more than one

(1) well shall thereafter be produced from the common source of supply on any unit so established, and that the well permitted on that unit shall be drilled at the location thereon as prescribed by the Commission, with such exception as may be reasonably necessary where it is shown, upon application, notice and hearing in conformity with the procedural requirements of Sections 84 to 135, inclusive, Title 52, Oklahoma Statutes, 1941, and the Commission finds that any such spacing unit is located on the edge of a pool and adjacent to a producing unit, or for some other reason that to require the drilling of a well at the prescribed location on such spacing unit would be inequitable or unreasonable. Whenever such an exception is granted, the Commission shall adjust the allowable production for said spacing unit and take such other action as may be necessary to protect the rights of interested parties.

Decrease of size of units—Additional wells—
Enlargement of area—Size of units
at various depths

(c) The commission shall have jurisdiction upon the filing a proper application therefor, and upon notice given as provided in subsection (a) above, to decrease the size of the well spacing units or to permit additional wells to be drilled within the established units, upon proper proof at such hearing that such modification or extension of the order establishing drilling or spacing units will prevent or assist in preventing the various types of wastes prohibited by statute, or any of said wastes, or will protect or assist in protecting the correlative rights of persons interested in said common source of supply, or to enlarge the area covered by the spacing order, if such proof discloses that the development or the trend of development indicates that such common source of supply underlies an area not covered by the spacing order. The commission shall not establish well spacing units of more than forty (40) acres in size covering common sources of supply of oil the top of which lies less than 5,000 feet below the sur-

face as determined by the original or discovery well in said common source of supply. The commission shall not establish well spacing units of more than eighty (80) acres in size covering common sources of supply of oil the top of which lies less than 9,990 feet and more than 5,000 feet below the surface as determined by the original or discovery well in said common source of supply. As amended Laws 1959, p. 217, § 1.

Violations of order—Separately owned tracts or undivided interests—Pooling costs

(d) The drilling of any well or wells into any common source of supply for the purpose of producing oil or gas therefrom, after a spacing order has been entered by the Commission covering such common source of supply, at a location other than that fixed by said order is hereby prohibited. The drilling of any well or wells into a common source of supply, covered by a pending spacing application, at a location other than that approved by a special order of the Commission authorizing the drilling of such well, is hereby prohibited. The operation of any well drilled in violation of any spacing so entered is also hereby prohibited. When two (2) or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests and develop their lands as a unit. Where, however, such owners have not agreed to pool their interests, and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit. All orders requiring such pooling shall be made after notice and hearing, and

shall be upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas. The portion of the production allocated to the owner of each tract or interests included in a well spacing unit formed by a pooling order shall, when produced, be considered as if produced by such owner from the separately owned tract or interest by a well drilled thereon. Such pooling order of the Commission shall make definite provisions for the payment of cost of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commission shall determine the proper costs after due notice to interested parties and a hearing thereon. The operator of such unit, in addition to any other right provided by the pooling order or orders of the Commission, shall have a lien on the mineral leasehold estate or rights owned by the other owners herein and upon their shares of the production from such unit to the extent that costs incurred in the development and operation upon said unit are a charge against such interest by order of the Commission or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order. The Commission is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to production from such well which would be received by the owner, or owners, for whose benefit the well was drilled or operated, after payment of royalty, until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or

proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in said unit.

For the purpose of this Act the owner, or owners, of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths (7/8) interest in and to said rights and a lessor to the extent of the remaining one-eighth (1/8) interest therein. Should the owners of separate tracts or interests embraced within a spacing unit fail to agree upon a pooling of their interests and the drilling of a well on the unit, and should it be established by final, unappealable judgment of a court of competent jurisdiction that the Commission is without authority to require pooling as provided for herein, then subject to all other applicable provisions of this Act, the owner of each tract or interest embraced within a spacing unit may drill on his separately owned tract, and the allowable production therefrom shall be that portion of the allowable for the full spacing unit as the area of such separately owned tract bears to the full spacing unit.

In the event a producing well, or wells, are completed upon a unit where there are, or may thereafter be, two (2) or more separately owned tracts, any royalty owner or group of royalty owners holding the royalty interest under a separately owned tract included in such spacing unit shall share in the one-eighth (1/8) of all production from the well or wells drilled within the unit, or in the gas well rental provided for in the lease covering such separately owned tract or interest in lieu of the customary fixed royalty, in the proportion that the acreage of their separately owned tract or interest bears to the entire acreage of the unit; provided, where a lease covering any such separately owned tract or interest included within a spacing unit stipulates a royalty in excess of one-eighth (1/8) of the production, or said lease shall be subject to an overriding royalty, to production payment or other obligation, then the lessee of said lease out of his share of the working

interests form the well drilled on said unit, shall sustain and pay said excess royalty, overriding royalty, or production payment, and therefrom meet any other obligation due in respect to the separately owned tract or interest held by him. Laws 1947, p. 328, § 1.

APPENDIX 3

Title 52, Okla. Stat., § 111

§ 111. Collateral attack on orders, rules and regulations—Appeals—Supreme Court

No collateral attack shall be allowed upon orders, rules and regulations of the Commission made hereunder, but the sole method of reviewing such orders and inquiring into and determining their validity, justness, reasonableness or correctness shall be by appeal from such orders, rules or regulations to the Supreme Court. On appeal every such order, rule or regulation shall be regarded as prima facie, valid, reasonable and just. No court of this State except the Supreme Court, and it only on appeal, as herein provided, shall have jurisdiction to review, reverse, annul, modify or correct any order, rule, or regulation of the Commission within the general scope of its authority herein or to enjoin, restrain or suspend execution or operation thereof, provided that writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would under like circumstances lie to any inferior court or officer. Laws 1933, ch. 131, p. 292, § 28.

[APPENDIX]

Title 52, Okla. Stat., § 112

§ 112. Application to amend or modify orders—Hearing—Appeal

Any person affected by any Legislative or administrative order of the Commission shall have the right at any time to apply to the Commission to repeal, amend, modify, or supplement the same. Such application shall be in writing and shall be heard as expeditiously as possible after notice of the hearing thereon shall have been given in the manner provided by Section 14 of this Act. An appeal shall lie to the Supreme Court from any order made by the Commission in any such proceedings or from the refusal of the Commission to make any order petitioned for therein, in the same manner and within the same time in which other appeals are authorized to be taken by the provisions of this Act, and, on any such appeal, the Supreme Court may affirm the order of the Commission, or the Commission's action in refusing to make the order petitioned for, or may itself make the order which the Commission should have made, or remand the cause to the Commission with directions to make such order as the Supreme Court may determine should have been made. Laws 1933, ch. 131, p. 292, § 29.

Title 52, Okla. Stat., § 113.

§ 113. Appeals—Power of Supreme Court—Supersedeas—Bond

In the manner now provided by law for taking appeals to the Supreme Court from orders, rules or regulations of the Commission affecting transportation and transmission companies, appeals may be taken to the Supreme Court from any order, rule or regulation made, issued or promulgated by the Commission under the provisions of Section 1 to 13, inclusive, (a) by the Attorney General, or (b) by the Proration Attorney, or (c) by the Proration Umpire, on behalf of the State; or by any person aggrieved by such

order, rule, or regulation appealed from. On such appeal the Supreme Court shall have power to determine the validity, the reasonableness and justice of such order, rule, or regulation, and should the Court find from the record that the order, rule or regulation appealed from is incorrect, unreasonable, unjust or insufficient in any particular it shall amend, modify, or supplement such order, rule or regulation so as to make the same correct, reasonable, just or sufficient, or shall substitute therefor such order, rule, or regulation as in the Court's opinion is warranted by the record, is reasonable and just, and will effect the purposes and intent of this Act. On such appeals no order, rule or regulation shall be reversed and remanded to the Commission for a new trial thereon or for the taking of additional testimony unless the Court shall find that the evidence introduced before the Commission is insufficient to enable the Court to determine and make a proper order, rule, or regulation or that the party appealing did not have lawful notice of the hearing before the Commission, or that the Commission refused to receive competent evidence offered by the party appealing, which, if true, would leave the order, rule or regulation appealed from without substantial basis in fact. In like manner appeal may be taken to the Supreme Court from any order, judgment or decree issued, or final action taken by the Commission in any proceeding before it wherein it is sought to have any person adjudged (a) guilty of direct contempt, or (b) punished as for contempt for violation of any provision of this Act or of any order, rule or regulation of the Commission made hereunder, or (c) in which is sought any other order of enforcement for the purpose of enforcing the orders, rules, and regulations of the Commission made hereunder, provided any such appeal may be taken and prosecuted only by (a) the Attorney General, or (b) the Proration Attorney, or (c) the Proration Umpire, on behalf of the State, or (d) by any person against whom any such order or decree of contempt, or as for contempt, or other order of

enforcement shall have been rendered, or (c) by any other person whose interests are affected by such order, judgment, decree or final action taken by the Commission in such proceeding and who is aggrieved thereby.

No order, rule, regulation, judgment or decree or final action of the Commission appealed from shall be superseded except by order of the Commission or the Supreme Court. No supersedeas shall be granted by either the Commission or the Supreme Court except upon condition that the appellant shall file in said appeal a bond with such surety as shall be approved by the Commission or the Supreme Court, granting such supersedeas. Said bond shall, (a) be in such amount, (b) contain such terms and conditions and (c) be payable to the State for its benefit or for the benefit of such person or persons as shall be damaged by such appeal, if the order, rule, regulation, judgment, decree or action of the Commission appealed from shall be affirmed; all as shall be provided and required by the Commission or the Supreme Court granting such supersedeas.

All appeals under the provisions of this Act must be taken within 60 days from the date on which the order, rule, regulation, judgment, decree or final action of the Commission appealed from shall have been made, rendered or taken by the Commission; and except as otherwise provided in this Act, the hearing and determination thereof by the Supreme Court, and the enforcement of its judgment and decree therein, and against the sureties upon the supersedeas bond therein, shall be governed by the provisions of law now in force applicable to appeals in proceedings for contempt and other proceedings for the violation of orders, rules and regulations of the Commission affecting transportation companies; and to the extent possible under existing laws the Supreme Court shall give precedence to all such appeals in the hearing and disposition thereof. Laws 1933, ch. 131, p. 293, § 30.